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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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Federal Communications Commission
Office of Secretary

In the Matter of)	FCC 02-201
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-112
Table of Allotments, FM Broadcast Stations)	RM-9027
(Anniston and Ashland, AL, College Park,)	RM-9268
Covington, and Milledgeville, Georgia))	RM-9384

To: The Commission

**SECOND MOTION FOR LEAVE TO FILE SUPPLEMENT TO
COMPLAINT AND REQUEST FOR INVESTIGATION**

**PRESTON W. SMALL
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November 20, 2003

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Preston W. Small (Mr. Small), by his attorney, hereby seeks leave to supplement his October 29, 2003 *Complaint and Request for Investigation* with further information concerning the use of political influence in an attempt to corrupt the captioned restricted proceeding. In support whereof, the following is respectfully submitted:

1) On November 18, 2003 undersigned counsel received a copy of the Deputy Associate General Counsel's November 6, 2003 letter to Senator Jeff Sessions which advises the Senator that his September 24, 2003 letter to Chairman Powell concerning the captioned restricted proceeding violated the *ex parte* rules because the Senator's letter was not served on the parties to the proceeding.¹ Because the information presented herein arose recently and is potentially disqualifying to WNNX/Susquehanna, it is respectfully submitted that consideration of this supplement would serve the public interest.

2) Of great significance is the fact the sentences in Senator Session's letter are in many cases identical to, and substantially identical to, the sentences contained in Senator Shelby's October 8, 2003 letter. The Senators' letters were clearly written from the same script and, accordingly, the same people or people are responsible for contacting both Senators in an attempt to corrupt the instant restricted proceeding and Senator Session's letter reveals a patten of attempting to corrupt this proceeding and that Senator Shelby's letter was not an isolated, albeit an egregiously improper, contact. In *Litigation Recovery Trust*, 17 FCC Rcd. 21852 ¶ 11 (FCC 2002) the Commission found

¹ The envelope transmitting the Deputy Associate General Counsel's November 6, 2003 letter to the undersigned bears a November 14, 2003 postmark. Neither Mr. Small nor undersigned counsel received a copy of Senator Session's letter until receipt of the copy sent by the Deputy Associate General Counsel. As was the case with Senator Shelby's letter, it is assumed that Senator Sessions was not aware that he was being asked to violate the *ex parte* rules and inject political influence into a restricted proceeding. Like Senator Shelby, Senator Sessions depends upon those coming to him to be candid about what he is being asked to do and clearly Senator Sessions was not advised that he was being asked to make illegal comments in a restricted proceeding. Thus, Mr. Small does not believe that the Senator is responsible for the attempt to corrupt this proceeding, but that the responsibility for that lies with Mr. Lipp and his clients.

a pattern of misconduct and “authorized its Bureaus and Offices to impose sanctions upon participants whose primary purpose is to abuse the Commission’s processes.” *See also Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Bagdad, Arizona), Notice of Proposed Rule Making*, 9 FCC Rcd. 70 n. 2 (Alloc. Br. 1993) (Commission may disregard a petitioner’s expression of interest where an abuse of process has occurred). Absent explanations from all those responsible for causing two United States Senators to violate the Commission’s *ex parte* rules in order to bring political influence to bear in this restricted proceeding, and because WNNX/Susquehanna have failed to explain their roles,² and because WNNX/Susquehanna are the substantially benefitting parties from the misconduct, the Commission has no choice but to sanction WNNX/Susquehanna by disregarding their expression of interest in this proceeding.

3) Moreover, the person or persons responsible for soliciting the *ex parte* political influence represented by Senator Session’s letter stood by and reported nothing even after reviewing Mr. Small’s October 15, 2003 *Notice*, the Deputy Associate General Counsel’s October 22, 2003 letter to Senator Shelby, and Mr. Small’s October 29, 2003 *Complaint*, even though he/she/they knew of the existence of Senator Sessions’s earlier written September 24, 2003 letter and the *ex parte* violation it constituted. For the responsible party or parties to stand by silent, failing to report an *ex parte* violation which he/she/they solicited in the first place constitutes a serious lack of candor and a very serious breach of the Commission’s trust deserving of an equally severe sanction.³

The Commission long ago determined that a licensee’s intentional deception of the Commission by the submission of either false information or incomplete and misleading information

² Mr. Lipp/WNNX/Susquehanna’s November 6, 2003 *Response* is completely silent about Mr. Lipp’s indirect involvement in the *ex parte* violation and is completely silent about the roles which WNNX/Susquehanna played.

³ The revelation of Senator Session’s letter underscores that there may be other *ex parte* communications circulating which are unknown to Mr. Small.

is viewed as a “serious breach[] of trust.” *Character Qualifications*, 102 FCC 2d 1179, 1211 (FCC 1986). The Commission must rely upon the parties before it to be forthcoming in order to maintain the integrity of its processes. *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 (Rev Bd. 1990). The court of appeals has determined that “applicants before the FCC are held to a high standard of candor and forthrightness. The Commission must license more than 10,000 radio and television stations in the public interest, and therefore relies heavily on the completeness and accuracy of the submissions made to it.” *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1139 (D.C. Cir. 1985) “The bedrock requirement for absolute truth and candor from a Commission licensee or from a license[] applicant is, simply stated, this agency’s quintessential regulatory demand.” *California Broadcasting Corporation*, 2 FCC Rcd 4175, 4177 (Rev. Bd. 1987) (*italics in original*). The party or parties who have failed, to date, to come forward to take responsibility for the *ex parte* communications made by the Senators have failed miserably, and repeatedly, at serving the Commission’s “quintessential regulatory demand” and severe penalties are in order.

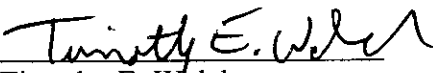
4) A pattern has now been shown to exist in this case in which some person or persons have attempted to corrupt the instant restricted proceeding. While we know that the owners of the six Alabama calls signs referenced in the Senator’s letters are represented by Mr. Lipp, the facts and circumstances surrounding the production of the letters and the attempted introduction of those letters into the instant proceeding remain unknown. Obviously, at least two *ex parte* violations have occurred and just as obviously the parties responsible for the *ex parte* violations have not come forward to forewarn the Commission about the *ex parte* violations nor to take responsibility for causing the *ex parte* violations, and they have lacked candor on the matter. The Commission must determine that facts and circumstances behind the multiple solicitations of the *ex parte* political influence which has been brought to bear in this proceeding for the purpose of corrupting this proceeding, and the Commission determine which party or parties have lacked candor regarding the

Senators' letters, and the Commission must administer a severe sanction when the responsible party or parties are found culpable. If it develops that either Mr. Lipp, or his clients WNNX/Susquehanna, had anything to do with the solicitations, or with the failure to report those matters, or with the failure to report the existence of the *ex parte* letters, then the appropriate sanction is debarment of WNNX/Susquehanna from this proceeding.

5) Mr. Lipp/WNNX/Susquehanna have argued to the Commission that "Small's complaint and supplement are acts of desperation." November 6, 2003 *Response*, ¶ 3. Mr. Lipp/WNNX/Susquehanna attempt to deflect away who is the "desperate" party in this proceeding. It was not Mr. Small who decided to bring two United States Senators into this proceeding on an *ex parte* basis to try to get relief through the use of political pressure, nor is it Mr. Small who lacked candor in the matter, nor is it Mr. Small who is treating these very serious matters in a cavalier fashion. That Mr. Lipp/WNNX/Susquehanna do not view lack of candor as a serious matter before the Commission merely serves to highlight the need for the Commission to deal severely with them.

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November 20, 2003

Respectfully submitted,
PRESTON W. SMALL


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His Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of November 2003 served a copy of the foregoing *Second Motion for Leave to File Supplement to Complaint and Request for Investigation* by First-Class United States mail, postage prepaid, upon the following:

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